

218442

STATE OF SOUTH CAROLINA)

Monica Rakes v. South Carolina Electric & Gas Company)

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA COVER SHEET

DOCKET NUMBER: 2009 - 257 - E

(Please type or print)

Submitted by: K. Chad Burgess
Address: SCANA Corp.
1426 Main Street MC 130
Columbia, SC 29201

SC Bar Number: 69456
Telephone: 803-217-8141
Fax: 803-217-7931
Other:
Email: chad.burgess@scana.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

Emergency Relief demanded in petition Request for item to be placed on Commission's Agenda expeditiously

Other:

Table with 2 main columns: INDUSTRY (Check one) and NATURE OF ACTION (Check all that apply). Includes categories like Electric, Gas, and various legal actions such as Affidavit, Motion, and Petition.



K. Chad Burgess
Senior Counsel

chad.burgess@scana.com

August 6, 2009

VIA ELECTRONIC DELIVERY

The Honorable Charles Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
100 Executive Center, Suite 100
Columbia, South Carolina 29210

RE: Monica Rakes v. South Carolina Electric & Gas Company
Docket No. 2009-257-E

Dear Mr. Terreni:

Enclosed please find for filing the Answer of South Carolina Electric & Gas Company ("SCE&G") to the Complaint filed by Monica Rakes in the above captioned matter along with the Affidavit of Marsha Klatt. We are also filing a Motion to Dismiss or, in the Alternative, to Waive Requirement that Public Utility Must Continue Providing Service Upon Receipt of Customer Complaint

By copy of this letter, we are also serving a copy of these documents on Monica Rakes as well as counsel for the South Carolina Office of Regulatory Staff and attach a certificate of service to that effect.

If you have any questions, please advise.

Very truly yours,


K. Chad Burgess

KCB/kms
Enclosure

cc: Monica Rakes
Shannon Bowyer Hudson, Esquire
(all via First Class U.S. Mail)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-257-E

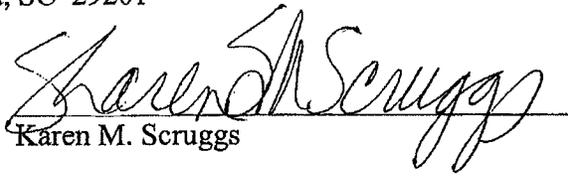
IN RE:

Monica Rakes,)	
)	
Complainant/Petitioner,	)	CERTIFICATE
	)	OF SERVICE
v.)	
)	
South Carolina Electric & Gas Company,)	
)	
Defendant/Respondent.)	
<hr/>		

This is the certify that I have caused to be served this day one (1) copy of South Carolina Electric & Gas Company's **Answer, Affidavit of Marsha Klatt, and Motion to Dismiss or, In the Alterative, to Waive Requirement that Public Utility Must Continue Providing Service Upon Receipt of Customer Complaint** via U.S. Mail to the persons named below at the addresses set forth:

Monica Rakes
70 Pepper Street
Varnville, SC 29944-5301

Shannon Bowyer Hudson, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201


Karen M. Scruggs

Columbia, South Carolina
This 6th day of August 2009

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2009-257-E

IN RE:)	
)	
Monica Rakes,)	
)	
Complainant/Petitioner,	)	ANSWER
)	
v.)	
)	
South Carolina Electric & Gas Company,)	
)	
Defendant/Respondent.)	
)	

Pursuant to 26 S.C. Code Ann. Regs. 103-826 and applicable South Carolina law, South Carolina Electric & Gas Company (SCE&G) answers the Complaint of the above-named as follows:

FOR A FIRST DEFENSE

1. South Carolina Electric & Gas Company (SCE&G) denies each and every allegation of the Complaint except as hereinafter admitted.

FOR A SECOND DEFENSE

2. As to the unnumbered paragraph, SCE&G answers that it has no record that Monica Rakes (Rakes) ever made a request for her meter to be checked. However, upon receipt of Rakes' letter, SCE&G interpreted this as a request and tested Rakes' meter to ensure that it was working properly. SCE&G avers that on July 20, 2009, a test performed on the meter showed that it was working properly and operating within regulatory standards. A

copy of the test result is attached as Exhibit A. As to the allegation that Rakes had the “heater (water)” or duct works checked, SCE&G lacks sufficient information to form a belief that this maintenance check was actually performed and therefore denies this allegation. SCE&G denies that Rakes’ utility bill for the month of June 2009 was too high. SCE&G avers that June was actually the lowest bill for Ms. Rakes since October 2008. Upon information and belief, SCE&G further answers that Rakes’ electricity usage and electricity charges accurately correspond to each other and are consistent with Rakes’ past uncontested utility bills. Upon information and belief, SCE&G further answers that based on Rakes’ past payment history and behavior, Rakes is abusing 26 S.C. Code Ann. Regs. 103-345 for the purpose avoiding the payment of past due and current utility bills. To the extent an additional response is required, any other allegation is denied.

FOR A THIRD DEFENSE

3. The Complaint is moot, as the relief requested has already been granted.

FOR A FOURTH DEFENSE

4. The Complaint should be dismissed as an abuse of process because it was a frivolous action filed for the sole purpose of delay.

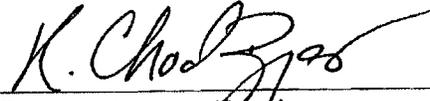
FOR A FIFTH DEFENSE

5. The Complaint fails to allege facts sufficient to constitute a claim upon which relief can be granted.

FOR A SIXTH DEFENSE

6. The Complaint should be dismissed as the Complainant for lack of standing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "K. Chad Burgess", written over a horizontal line.

K. Chad Burgess, Esquire
Assistant General Counsel
SCANA Corporation
1426 Main Street, MC 130
Columbia, South Carolina 29201
Telephone: 803-217-8141
Facsimile: 803-217-7931
chad.burgess@scana.com

*Attorney for Defendant/Respondent
South Carolina Electric & Gas Company*

Columbia, South Carolina
August 6, 2009

SCE&G CERTIFICATE OF ELECTRIC METER TEST

Meter Number: _____ Test Date: 7/20/2009
Customer: Monica Rakes
Address: 70 Pepper St. City: Varnville

Account Number:
Dial Reading (Index): 92417
Test Board Number: 07

Full Load % Registration: 100.12
Light Load % Registration: 99.01
Weighted Average % Registration: 99.90

Tested at Customer Request: Y
Tested at Company Request:

Remarks: Meter tested OK; No problems found;

SCE&G Remarks: Results to Marsha Klatt.

Tested By: Craig Wooten

Approved: Jerry Smith

This is to certify that the above listed meter was tested in SCE&G's electric meter test laboratory. All equipment used in this test has been calibrated with instruments whose accuracy can be traced to the National Institute of Standards and Testing (NIST). The limits of accuracy for watt-hour meters are governed by the South Carolina Public Service Commission.

Explanation of High Bill Test

To determine the accuracy of a meter, the meter is tested at two test points, one representing normal load conditions and another representing light load conditions. The result of the normal load condition test is noted as FULL LOAD % REGISTRATION. The result of the light load condition test is noted as LIGHT LOAD % REGISTRATION. The overall accuracy of the meter is indicated by WEIGHTED AVERAGE % REGISTRATION.

WEIGHTED AVERAGE % REGISTRATION = [(4 X FL %Registration) + LL %Registration] / 5

The WEIGHTED AVERAGE % REGISTRATION is the value that is used to determine if billing adjustments are necessary. Test results greater than 100 indicate that the meter is running FAST. Test results less than 100 indicate that the meter is running SLOW.

S.C. Public Service Commission regulation 103-340 requires adjustment of customer's bill for errors in percent registration greater than 2%.

SCE&G Copy

Form MT-399 (12-01)

SCE&G Research and Test Facility 105 Vantage Point Road, West Columbia, South Carolina 29172 www.sceg.com

Exhibit A

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2009-257-E

IN RE:)	
)	
Monica Rakes,	)	MOTION TO DISMISS OR, IN THE
	)	ALTERNATIVE, TO WAIVE
Complainant/Petitioner,	)	REQUIREMENT THAT
	)	PUBLIC UTILITY MUST CONTINUE
v.	)	PROVIDING SERVICE UPON RECEIPT
	)	OF CUSTOMER COMPLAINT
South Carolina Electric & Gas Company,)	
)	
Defendant/Respondent.)	
<hr/>		

INTRODUCTION

Pursuant to 26 S.C. Code Ann. Regs. 103-829, Respondent South Carolina Electric & Gas Company (“SCE&G”) herein moves the Public Service Commission of South Carolina (“Commission”) to dismiss the above-captioned matter on the grounds that the relief requested by the Complainant is moot. In the alternative, pursuant to 26 S.C. Code Ann. Regs. 103-803, SCE&G moves for an order waiving the requirement that a public utility must continue providing electric utility service upon receipt of a customer complaint being filed. In support of this motion, SCE&G would respectfully show as follows:

FACTUAL BACKGROUND

On or about June 22, 2009, Monica Rakes (“Rakes”) commenced the instant action by filing a complaint with the Commission. Therein, Rakes states that she “requested [her] meter to be looked at (*sic*).” Although SCE&G has no record of Rakes’ ever requesting that her meter

be checked, SCE&G considered Rakes' letter to be a request and subsequently tested the meter in accordance with 26 S.C. Code Ann. Regs. 103-373. The testing results demonstrated that the meter was operating within Commission required limits and accurately recorded the electricity consumed at her premises. Nevertheless, Rakes has requested that the Commission require SCE&G to continue to provide service to her premises until such time as a hearing can be held on this matter.

This Complaint is but the latest in a long history of similar requests made by Rakes throughout her customer history with SCE&G which began at her current address on July 7, 2004. Since beginning service with SCE&G, Rakes' account has exhibited extreme irregularities that indicate a deliberate attempt to avoid or prolong the payment for utility service. The account irregularities include Rakes' service being disconnected seven (7) times in twenty-four months and the convenient petitioning for hearings to the Commission for the sole purpose of tolling the disconnection of service.

Ms. Rakes has become a habitual complainant at the Commission, likely due to the perceived "free ride" that a complainant may achieve through the prevention of disconnection by virtue of the filing of a complaint. This matter represents the third complaint filed in less than 16 months. The prior two complaints were dismissed.

On March 31, 2008, Rakes filed her first complaint with the Commission alleging that SCE&G unfairly denied her request to be placed on a Deferred Payment Plan ("DPP") and also requested that SCE&G reconnect her utility service. Rakes' service had been discontinued due to failure to pay her electric bill. Rakes also claimed that there was a return check on her account that did not belong to her because she has a "cash only" account. Rakes further

claimed that she had made a cash payment on that account and provided SCE&G with a confirmation number of payment in order to get service reconnected.

Through its answer, SCE&G acknowledged Rakes' account was a "cash only" account "due to an inordinate number of returned checks written by Rakes to SCE&G." Answer, *Rakes v. South Carolina Electric & Gas Co.*, 2008-136-E. The denial of Rakes' initial request to be placed on a DPP was due to "account irregularities." *Supra*. SCE&G further rebuffed Rakes' complaint by stating that the confirmation number for the returned check was not posted to Rakes' account but was actually posted to a third-party account, implying that Rakes knowingly wrote a check for insufficient funds on the account of a third-party in order to get a confirmation number. Rakes presented that confirmation number to SCE&G as proof of payment – knowing that there would be a time delay in SCE&G's realization that the confirmation number belonged to the third-party account – and then fraudulently induced SCE&G into reconnecting service.

On April 7, 2008, SCE&G placed Rakes on a DPP in order to prevent the disconnection of electric service. On July 8, 2008, the Commission acknowledged that the relief being sought by Rakes was already implemented by SCE&G, but issued an order holding the docket open for 30 days to determine if any further relief was being sought. Order No. 2008-489 (July 8, 2008). Rakes never provided any further response and on September 10, 2008 the Commission issued a final Order Dismissing Complaint with Prejudice and closed the docket. Order No. 2008-621 (Sept. 10, 2008).

On March 27, 2009, Rakes filed a second complaint. Having once again failed to pay her electric bill, Rakes sought a delay of disconnection. *Rakes v. South Carolina Electric & Gas Co.*, 2009-137-E. In resolution of that matter, SCE&G placed Rakes on another DPP on April 13, 2009. At that time Rakes was \$1,133.70 in arrears. SCE&G agreed to allow Rakes

to pay \$151.45 per month plus current charges for six months. The Commission dismissed this complaint on the ground that Rakes entered into a DPP. Order No. 2009-298 (May 6, 2009).

On June 17, 2009, having continually failed to pay her electric bill or make payments under the DPP, Rakes received a Final Notice informing her that if the past due amount of \$364.87 was not received by 5:00 p.m. on June 23, 2009, service would be disconnected. On June 22, 2009, one day before the final deadline, Rakes requested another hearing with the Commission “due to the fact that [she] requested [that] her meters to be looked at” because incorrect meter reading were causing her utility bill to be too high.¹ *Rakes v. South Carolina Electric & Gas Co.*, 2009-258-E. Rakes’ complaint similarly requested that service not be disconnected until the time of her hearing.

Since the filing of this Complaint, Rakes’ balance has climbed to \$1,601.40, and Rakes has failed to make any payment on her account since even prior to filing her complaint – a period of nearly four months. *But see* PSC Compl. Form (“You must continue to make timely payments on any undisputed amounts on your account while your case is pending before the Commission or your service may be disconnected.”). As long as this matter remains unresolved, the balance due will continue to climb.

ARGUMENT

I. SCE&G tested the meter as requested by Rakes in her Complaint; therefore, the relief sought from the Commission is moot.

The Complaint should be dismissed on the grounds that the relief requested has been rendered moot. “A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *Sloan v. Greenville County*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). “[Courts] will not pass on moot and academic questions or

¹ A review of the bills indicates no abnormal consumption pattern.

make an adjudication where there remains no actual controversy.” *Jones v. Dillon-Marion Human Res. Dev. Comm’n*, 277 S.C. 533, 536, 291 S.E.2d 195, 196 (1982). “A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.” *Seabrook v. Knox*, 369 S.C. 191, 197, 631 S.E.2d 907, 910 (2006).

In the instant case, Rakes requests that the Commission require SCE&G to “look at” her meter – presumably, to determine whether the meter is accurately recording the level of electricity consumed at her residence. As further demonstrated in Exhibit A attached hereto and incorporated herein by reference, SCE&G performed the requested meter test on July 20, 2009, and a copy of the results are attached as Exhibit A hereto. In accordance with Regulation 103-373.2.B, the meter installed at Rakes’ residence meets the full load, light load, and average requirements set forth by the Commission. Because SCE&G has performed the requested meter testing which demonstrates Rakes’ meter performed accurately and within the limits established by Commission regulation, the relief requested by the Complaint has been rendered moot. Therefore, the Commission should dismiss the Complaint inasmuch as there is no existing controversy upon which the Commission can render a decision. *See Fabian’s Uptown Charleston, Inc. v. South Carolina Tax Comm’n*, 247 S.C. 164, 146 S.E.2d 608 (1966) (where the actions of the respondent render the issues moot and there remains no actual controversy, the action must be dismissed as presenting a moot question).

II. Pursuant to Rule 103-803, the Commission should waive the rule prohibiting discontinuation of service pending a hearing, in order to prevent continued abuse and manipulation of the rules governing public utilities.

In the alternative, SCE&G requests that the Commission permit the disconnection of Rakes’ electricity service for nonpayment while this Complaint is pending. As the Commission

is aware, once Office of Regulatory Staff (“ORS”) notifies a public utility of a customer complaint made to ORS, that public utility is prohibited from discontinuing a customer’s service until the complaint is resolved. The governing regulation, 26 S.C. Code Ann. Regs. 103-345, states that “[w]hen the ORS has notified the electrical utility that a complaint has been received concerning a specific account, the electrical utility shall refrain from discontinuing the service of that account until the ORS’s investigation is completed and the results have been received by the electrical utility.”

As evidenced from prior history, whenever faced with having service disconnected, Rakes relied on Regulation 103-345 as a last resort to halting any credit action on her account. The purpose of this regulation is to protect potentially aggrieved utility customers from having their service disconnected while any good faith dispute is pending before the Commission. The regulation was not intended as a way for customers to prolong or avoid the payment of properly due utility bills.

Rakes’ is exploiting Regulation 103-345 for the purpose of preventing her service from being discontinued again. Just like the previous year, when the winter season was over, Rakes’ only remaining option for avoiding payment was the DPP option. Again, SCE&G, in an effort to work with Rakes, placed her on the DPP, and Rakes again failed to pay her electric bills. SCE&G sent Rakes a Past Due Notice on June 8 and a Final Notice on June 17 informing her that service would be discontinued on June 23 if payment was not received. On June 22, one day before service was to be disconnected; Rakes filed a meritless complaint to prevent service from being discontinued until a hearing was held.

Rakes’ newest “complaint,” when looked at within a factual context, offers insight into Rakes’ true intentions. As discussed earlier, Rakes states that the reason for the complaint is

because she requested that SCE&G check her meter because she believed the utility bill was too high. SCE&G, despite having a very lengthy transaction history with Rakes, has no record of Rakes ever requesting that her meter be checked. SCE&G avers that Rakes never made a request for her meter to be checked, but only alleged that a request was made to prevent her service from being discontinued. Despite its belief that no request was ever made, SCE&G treated Rakes' "complaint" as a request and subsequently tested her meter. The test conclusively showed the meter to be functioning properly. *See Exhibit A (meter test results).*

Regulations dealing with the application of the rules governing the Commission and all public utilities never intended to provide loop holes that would help allow customers to avoid paying their utility bills. The possibility of misapplication or abuse of the rules was contemplated when the regulation was drafted. The governing regulations acknowledge that there may be circumstances that warrant the waiver of certain rules when applying them may cause undue hardship to any party involved and such a waiver would not be contrary to the public interest. In particular, Regulation 103-803 states:

In any case where compliance with any of these rules and regulations produces unusual hardship or difficulty, or where circumstances indicate that a waiver of one or more rules or regulations is otherwise appropriate, such rule or regulation may be waived by the Commission upon a finding by the Commission that such waiver is not contrary to the public interest.

26 S.C. Code Ann. Regs. 103-803.

SCE&G attempted to work with Rakes by allowing her to be placed on a DPP multiple times. However, Rakes' past complaints and extremely irregular payment history strongly suggest intent to avoid, or at least prolong, paying her utility bills by exploiting the system for as long as possible. The possibility of mass exploitation of this loop hole exists and failure to prevent its abuse would encourage others to continue this type of fraudulent behavior. The

unintended consequences of allowing customers to avoid payment could result in SCE&G and its other customers having to suffer unusual hardship by carrying the production cost of providing free electricity for indeterminable periods of time. By waiving the regulation prohibiting the discontinuation of service pending a hearing, Rakes' fraudulent behavior will no longer be rewarded while preserving the regulation's true purpose of protecting customers seeking to have legitimate issues addressed without fear of reprisal from a public utility company.

CONCLUSION

For the foregoing reasons, SCE&G respectfully requests that Rakes' Complaint be dismissed inasmuch as the relief requested has been rendered moot. In the alternative, pursuant to 26 S.C. Code Ann. Regs. 103-803, SCE&G asks the Commission to waive the requirement that a public utility must continue offering electric utility service upon receipt of a customer complaint being filed, and allow SCE&G to discontinue electric service to Monica Rakes until such time as her account balance has been paid in full.

Respectfully submitted,



K. Chad Burgess, Esquire
Assistant General Counsel
SCANA Corporation
1426 Main Street, MC 130
Columbia, South Carolina 29201
(803) 217-8141
chad.burgess@scana.com

*Attorneys for Defendant/Respondent
South Carolina Electric & Gas Company*

Columbia, South Carolina
August 6, 2009

SCE&G CERTIFICATE OF ELECTRIC METER TEST

Meter Number: _____ Test Date: 7/20/2009
Customer: Monica Rakes
Address: 70 Pepper St. City: Varnville

Account Number:
Dial Reading (Index): 92417
Test Board Number: 07

Full Load % Registration: 100.12
Light Load % Registration: 99.01
Weighted Average % Registration: 99.90

Tested at Customer Request: Y
Tested at Company Request:

Remarks: Meter tested OK; No problems found;

SCE&G Remarks: Results to Marsha Klatt.

Tested By: Craig Wooten

Approved: Jerry Smith

This is to certify that the above listed meter was tested in SCE&G's electric meter test laboratory. All equipment used in this test has been calibrated with instruments whose accuracy can be traced to the National Institute of Standards and Testing (NIST). The limits of accuracy for watt-hour meters are governed by the South Carolina Public Service Commission.

Explanation of High Bill Test

To determine the accuracy of a meter, the meter is tested at two test points, one representing normal load conditions and another representing light load conditions. The result of the normal load condition test is noted as FULL LOAD % REGISTRATION. The result of the light load condition test is noted as LIGHT LOAD % REGISTRATION. The overall accuracy of the meter is indicated by WEIGHTED AVERAGE % REGISTRATION.

WEIGHTED AVERAGE % REGISTRATION = [(4 X FL %Registration) + LL %Registration] / 5

The WEIGHTED AVERAGE % REGISTRATION is the value that is used to determine if billing adjustments are necessary. Test results greater than 100 indicate that the meter is running FAST. Test results less than 100 indicate that the meter is running SLOW.

S.C. Public Service Commission regulation 103-340 requires adjustment of customer's bill for errors in percent registration greater than 2%.

SCE&G Copy

Form MT-399 (12-01)

SCE&G Research and Test Facility 105 Vantage Point Road, West Columbia, South Carolina 29172

www.sceg.com

Exhibit A

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-257-E

IN RE:)	
)	
Monica Rakes,)	
)	
Complainant/Petitioner,)	
)	
v.	)	AFFIDAVIT
)	
South Carolina Electric & Gas Company,)	
)	
Defendant/Respondent.)	
_____)	

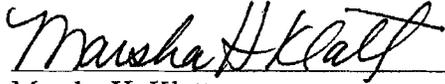
Personally appeared before me Marsha H. Klatt who, having first been duly sworn, deposes and states as follows:

1. My name is Marsha H. Klatt and I am a Senior Analyst for South Carolina Electric & Gas Company (“SCE&G” or “Company”). Among other things, I am responsible for the investigation of customer complaints received through the South Carolina Office of Regulatory Staff as well as customer complaints filed with the Public Service Commission of South Carolina (“Commission”) requesting a hearing before the Commission. I am competent to make this affidavit.

2. This affidavit is based upon my personal knowledge and review of documents received and maintained in the ordinary course of business by SCE&G. I am familiar with the records of SCE&G that pertain to Ms. Monica Rakes and have personally worked on the documents and records concerning Ms. Rakes.

3. I assisted SCE&G's attorney in preparing the Company's Answer and Motion to Dismiss dated August 6, 2009, which was filed in response to the Complaint of Ms. Rakes dated June 22, 2009. I have read the Answer and Motion to Dismiss and verify that the information contained within the Answer and Motion to Dismiss is true and accurate to best of my knowledge, information and belief.

FURTHER AFFIANT SAYETH NOT.



Marsha H. Klatt

Sworn to and subscribed before me
this 6th day of August, 2009



Notary Public for South Carolina
My Commission Expires: 5/30/2017